

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lauren Kerstein	Team: Squad #7	CCRB Case #: 201412579	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 12/22/2014 7:10 PM	Location of Incident: In front of Mount Horeb Baptist Church located at 109-20 34th Avenue	Precinct: 115	18 Mo. SOL 6/22/2016	EO SOL 6/22/2016	
Date/Time CV Reported Tue, 12/23/2014 12:03 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 12/23/2014 12:03 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Avidan Santiago	03685	933325	115 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Syed Eqbal	10627	928251	115 PCT
2. POM Kristian Beauvoir	05450	952454	115 PCT
3. POM David Walker	08040	948157	115 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Avidan Santiago	Discourtesy: PO Avidan Santiago spoke discourteously to § 87(2)(b)	
B.POM Avidan Santiago	Force: PO Avidan Santiago used pepper spray against § 87(2)(b)	

### Case Summary

On December 22, 2014, at approximately 7:10 p.m., § 87(2)(b) a taxi driver, called 911 to report that four unidentified men he had driven to Mount Horeb Baptist Church, located at 109-20 34<sup>th</sup> Avenue in Queens, had not paid their fare. PO Kristian Beauvoir, PO Syed Egbal, PO Avidan Santiago and PO David Walker responded to the scene.

While the officers, § 87(2)(b) and an unidentified male were discussing the matter of the unpaid fare on the church's landing in front of the entrance, § 87(2)(b) exited the church. § 87(2)(b) threw the fare money at § 87(2)(b) told him to get the "fuck" out of here and threatened to beat him up. After § 87(2)(b) left, § 87(2)(b) engaged in a verbal dispute with PO Santiago at which time PO Santiago repeatedly used profanity toward § 87(2)(b) (Allegation A). The interaction ended with PO Santiago pepper spraying § 87(2)(b) (Allegation B).

After § 87(2)(b) was pepper sprayed, an irate crowd exited the church and approached the four officers. The officers called for additional units, and Capt. Brian Hennessy arrived on the scene and instructed PO Santiago and PO Walker to leave. No summonses were issued and no arrests were made.

### Video Footage

Video surveillance footage from Mount Horeb Baptist Church was provided to the investigation by the Internal Affairs Bureau. The video footage shows part of the landing in front of the church doors and is over an hour long (encl. E1-E2). The video is not equipped with sound.

PO Egbal, PO Beauvoir, § 87(2)(b) and an unidentified man are seen talking animatedly outside the church when § 87(2)(b) approaches. A few minutes later, § 87(2)(b) pulls his suspenders from his shoulders, down to his waist, puffs out his chest and appears to be yelling at someone off camera. Other unidentified civilians step in front of § 87(2)(b) and push him back inside the church. Less than a minute later, § 87(2)(b) pushes open the church doors and tries to step back out but is pushed back inside by other civilians. A few seconds later, § 87(2)(b) again pushes the front doors open and tries to exit the church a second time. § 87(2)(b) repeatedly shoves an unidentified woman in an attempt to exit the church. After a few seconds, the woman is successful in pushing § 87(2)(b) back into the church. Shortly after, a crowd of people can be seen exiting the church.

PO Santiago is never seen on the video footage and no one is seen getting pepper sprayed.

### Attempts to Contact Civilians

- § 87(2)(b) and § 87(2)(b) § 87(2)(b) were the only parties who provided sworn statements to the CCRB in regard to this complaint. However, § 87(2)(b) § 87(2)(b) did not witness any FADO allegations.
- § 87(2)(b) and § 87(2)(b) all provided phone statements to the investigation; however, they were uncooperative in providing in-person statements (encl. U1-U15).
- Contact was never established with § 87(2)(b) the victim, or § 87(2)(b) and § 87(2)(b) witnesses. A CTS search yielded one prior complaint from 2010 that had one address and one phone number for § 87(2)(b). A Lexis Nexis search was conducted on January 2, 2015, which confirmed that address. Five phone calls and three letters were sent to § 87(2)(b) with no response. A Lexis Nexis search for § 87(2)(b) § 87(2)(b) and § 87(2)(b) came back negative and the investigation had no way to contact them (encl. U1-U15).

### **Mediation, Civil and Criminal Histories**

A Notice of Claim inquiry was submitted on March 27, 2015, the results of which are still pending. This case was unsuitable for mediation. According to the Office of Court Administration Records, in the last ten years § 87(2)(b) has not been arrested (encl. T1) § 87(2)(b)

- § 87(2)(b)

### **Civilian and Officer CCRB Histories**

- This is the first complaint filed by § 87(2)(b) (encl. B3).
- § 87(2)(b)
- PO Santiago has been a member of the service for 11 years and has been the subject of 14 allegations within seven complaints. The relevant portions of those complaints have been summarized below (encl. B1-B2, W1-W14):
  - In CCRB# 200501974, a civilian alleged that PO Santiago used “verbally abusive” language towards him. The specific language used was never verified and the complaint was closed as complainant unavailable.
  - In CCRB# 200912234, the investigation determined that PO Santiago threatened to arrest a civilian without justification. The Board recommended charges and the NYPD issued command discipline.
  - In CCRB# 201109759, a civilian alleged that PO Santiago called him a “maricon” and threatened to “wait for [him] outside the stationhouse.” § 87(2)(g)
  - In CCRB# 201209097, a civilian alleged that PO Santiago made the following statements, “Who the fuck do you think you are?” “Who the fuck wants to know my name?” Get the fuck up on the curb!” and “Give me your fucking ID!” § 87(2)(g)
  - In CCRB# 201412175, it was alleged that PO Santiago told a civilian that they should learn to speak English. This allegation is still pending investigation.

### **Findings and Recommendations**

#### **Allegations Not Pleaded**

- **Discourtesy and Force:** In a statement to IAB and her CCRB statement, § 87(2)(b) alleged that PO Santiago made numerous discourteous statements and pepper sprayed § 87(2)(b) corroborated this allegation in his phone statement to the CCRB. Given that § 87(2)(b) and § 87(2)(b) did not participate in the investigation and § 87(2)(b) did not witness these allegations, they have not been pled.

- **Offensive Language and Abuse of Authority:** § 87(2)(b) stated in her in-person statement that PO Santiago asked § 87(2)(b) if she wanted to be the “next victim.” In her phone statement to the CCRB, § 87(2)(b) did not corroborate this remark, but made other allegations of discourteous language and threats of force that § 87(2)(b) did not allege. Given that § 87(2)(b) did not participate in the investigation and that § 87(2)(b) did not witness these allegations, they have not been pled.

### **Officers Not Interviewed**

The investigation did not obtain statements from PO Walker and PO Beauvoir with regard to this incident since their account of what happened was provided to the investigation by Patrol Borough Queens North Investigations Unit (encl. P4 and Q3). Their statements did not alter the recommended allegation dispositions.

### **Explanation of Subject Officer Identification**

- § 87(2)(b) obtained PO Santiago’s name off his badge during the incident (G3-G4) and PO Santiago acknowledged his interaction with § 87(2)(b) (encl. N4-N5).

### **Allegation A: Discourtesy – PO Avidan Santiago spoke discourteously to § 87(2)(b)**

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that after hearing PO Santiago curse from within the church, saying “We can get it popping right here, motherfucker,” and directing someone to “get the fuck back,” her and § 87(2)(b) exited the church to see what was happening (encl. G1-G8). § 87(2)(b) alleged that after § 87(2)(b) threatened § 87(2)(b) PO Santiago asked § 87(2)(b) who the “fuck” he thought he was talking to (I1-I4).

PO Santiago alleged that “suddenly without warning” and for “whatever reason,” § 87(2)(b) took off his jacket and suspenders and charged at him yelling, “You want some, pig motherfucker!” and chest bumped him. PO Santiago denied any verbal interaction with § 87(2)(b) prior and denied using the words “fuck” or “fucking” in any of his statements (encl. N4-N5).

PO Eqbal stated that § 87(2)(b) began focusing his aggression on PO Santiago, and it became a “back and forth” argument between them with both parties using “strong language.” While stating that PO Santiago had initially been polite, when that did not work, PO Santiago began saying “Who the fuck do you think you are,” and “You can’t fucking talk to us like that.” PO Eqbal could not remember all the statements PO Santiago made, but stated that he began using “fuck” in every sentence as if it were a verb. PO Eqbal denied hearing PO Santiago use any other curse words (encl. O6-O7).

Officers are to be courteous and respectful in dealing with the public. Patrol Guide, Section 203-09 (encl. i). The NYPD deems profanity as unnecessarily rude and belligerent unless used during stressful street encounters or to gain compliance from a non-compliant civilian. PD v. Carlton, OATH Index No. 869/00 (encl. ia-ir).

§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

The statements PO Eqbal recalled PO Santiago using, “Who the fuck do you think you are,” “You can’t fucking talk to us like that,” and using the word “fuck” in every sentence as if it were a verb, served no police function. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation B: Force – PO Avidan Santiago used pepper spray against** § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

The video footage shows PO Eqbal and PO Beauvoir speaking with two men when § 87(2)(b) approaches them. Within minutes, § 87(2)(b) is seen pulling down his suspenders, puffing up his chest and yelling at someone off camera, identified via investigation as PO Santiago. § 87(2)(b) attempts to get closer to PO Santiago but two civilians push him back inside of the church. Less than a minute later, § 87(2)(b) tries to exit the church two more times. Each time, § 87(2)(b) is physically fighting his family members to try and get outside. Shortly after, a crowd of civilians exit the church (encl. E1-E2).

The statements among officers and civilians diverge with regard to how § 87(2)(b)s interaction with PO Santiago began. § 87(2)(b) alleges that after hearing PO Santiago curse from within the church, her and § 87(2)(b) exited the church and saw PO Santiago arguing with her other family members. § 87(2)(b) began cursing at PO Santiago when suddenly PO Santiago pepper sprayed § 87(2)(b) (encl. G3-G4). § 87(2)(b), § 87(2)(g)

Alternatively, § 87(2)(b) alleged that after arguing with PO Santiago, § 87(2)(b) turned and began to enter the church when PO Santiago grabbed him and asked him if he wanted to be “another victim.” § 87(2)(b) pulled his arm away and then PO Santiago followed him into the church vestibule and pepper sprayed him (encl. I1-I4). § 87(2)(b), § 87(2)(g)

PO Santiago alleged that “suddenly without warning” and for “whatever reason,” § 87(2)(b) took off his jacket and suspenders and charged at PO Santiago, yelling “You want some, pig motherfucker!” and chest bumped him. After § 87(2)(b) did not move when PO Santiago told him to step back, PO Santiago went down three steps and discharged two one-second bursts of pepper spray aimed at § 87(2)(b)s face. PO Santiago planned to arrest § 87(2)(b) but lost sight of him in the crowd (encl. N5-N6). PO Santiago’s account of § 87(2)(b) taking off his suspenders and charging at him are corroborated by the video footage. § 87(2)(g)

§ 87(2)(b). PO Eqbal stated that after § 87(2)(b)

§ 87(2)(b) threatened § 87(2)(b) the officers began a conversation with § 87(2)(b) § 87(2)(b) began focusing his aggression on PO Santiago and they began arguing. § 87(2)(b) then stepped towards PO Santiago so that their chests were touching. Other civilians pulled § 87(2)(b) back inside the church, but within a minute, § 87(2)(b) came back outside and said something to the effect of “we can do something right here” and rapidly approached PO Santiago while puffing out his chest and shoulders. PO Santiago discharged his OC Spray as § 87(2)(b) § 87(2)(b) approached, above the heads of a few civilians who were between § 87(2)(b) and himself (encl. O5-O7).

The use of pepper spray constitutes physical force under the New York State Penal Law. Pepper spray may be used when a member of service reasonably believes it is necessary to effect an arrest of a resisting suspect, for self-defense or defense of another from unlawful force. Patrol Guide, Section 212-95 (encl. A1-A4).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

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